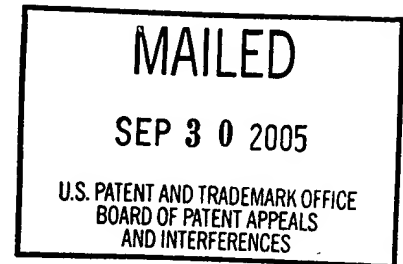


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MICHAEL ZOBEL,  
THOMAS ECKEL,  
DIETER WITTMANN, and  
BERND KELLER



Appeal No. 2005-1375  
Application No. 09/890,148

ON BRIEF

Before WALTZ, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal from the examiner's final rejection under 35 U.S.C. § 134 of claims 2, 3, 5, 7 to 9, 12, and 13.

Claim 5 is representative of the subject matter on appeal and is set forth below:

5. A thermoplastic molding composition comprising:

40 to 99 parts by wt. aromatic polycarbonate;

1 to 30 parts by wt. vinyl copolymer;

0.5 to 60 parts by wt. graft polymer; and

0.1 to 30 parts by wt. aluminum compound selected from the group consisting of water-containing oxides, phosphates, sulfates, sulfides, hydroxides, borates and borophosphates of aluminum and having an average particle diameter of 1 nm - 20  $\mu$ m.

The examiner relies upon the following references as evidence of unpatentability:

Wittmann et al. (Wittmann)	4,937,285	Jun. 26, 1990
Pan	5,274,017	Dec. 28, 1993
Wang et al. (Wang)	5,908,663	Jun. 1, 1999

Claims 2, 3, 5, 7 to 9, 12, and 13 stand rejected under 35 U.S.C. § 103 as being obvious over Wittmann in view of Pan, or Wittmann in view of Pan, taken further with evidence provided by Wang.

On page 3 of the Brief, appellants state that the claims stand or fall together, and we therefore consider claim 5 in this appeal. See 37 CFR § 41.37(c)(1)(vii) (September 2004); formerly 37 CFR § 1.192(c)(7) (2003). Also see Ex parte Schier, 21 USPQ2d 1016, 1018 (Bd. Pat. App. & Int. 1991).

We have carefully reviewed appellants' Brief and Reply Brief, the examiner's Answer, and the evidence of record. This review has led us to the following determinations.

#### OPINION

I. The 35 U.S.C. § 103 rejection of claims 2, 3, 5, 7 to 9, 12, and 13

We refer to the examiner's position and comments made on pages 3 through 7 of the answer. We add the following for emphasis only.

On page 5 of the Brief, appellants argue that "Wittman et al. provide no teaching, nor direction, nor guidance as to how to select any flame retardant." We disagree and refer to the examiner's response, beginning on page 5 of the Answer. On page 5 of the Answer the examiner correctly points out that Wittmann teaches that flame retardants may be added to the molded composition. See column 11, line 40 and column 11, lines 57 through 58. The examiner additionally explains that Wittmann teaches that uses for the molded composition include domestic appliances such as coffee machines and uses in electrical engineering. The examiner states for such uses, it would be desirable to use molded compositions containing flame-retardants. Hence, it is clear that Wittmann suggests the use of flame retardant additives.

Although Wittmann does not provide specific examples of the types of flame retardants used in the molded compositions, the examiner relies upon Pan for teaching this aspect of the claimed invention. Specifically, the examiner explains that Pan teaches aluminum oxide as flame-retardants for aromatic polycarbonates. Appellants do not dispute that the kind of resins disclosed in Pan are similar to the molding compositions as set forth in Wittmann. Hence, incorporating the teachings of Pan (particular type of flame retardant additive) into the molded compositions of Wittmann would have been prima facie obvious.

On page 5 of the Brief, appellants argue that the examiner has not shown where Pan discloses or suggests inclusion of a vinyl copolymer. The examiner does not rely upon Pan for this teaching. The examiner relies upon Wittmann for teaching this

aspect of the claimed invention. See, for example, the teaching of Wittmann found in column 9, lines 54 through 62.

Appellants also argue that Pan does not suggest water-containing oxides such as aluminum oxide hydroxide. Brief, page 5. We refer to the examiner's response beginning on page 6 of the Answer. The examiner explains that Pan teaches the use of an oxide that is a colloidal sol of aluminum oxide supported on silica available from Nalco Chemical Co. The examiner discusses the reference of Wang for showing that the Nalco 1056 Aluminized Silica is a 30% by weight solids aqueous colloidal suspension of aluminized silica particles and refers to column 5, lines 23 through 27 of Wang. Hence, we agree with the examiner's position that Pan teaches water containing oxides. Also, as pointed out by the examiner on page 6 of the Answer, appellants' claims do not recite "aluminum oxide hydroxide."

In the paragraph bridging pages 5 through 6 of the Brief, appellants argue that the examiner does not explain where Pan suggests the other Markush Group compounds recited in the last four lines of claim 5. All that is necessary is a teaching of one of the compounds from the Markush group (e.g., water containing oxides).

On page 6 of the Brief, appellants argue that Wang is directed to a topical carpet treatment and therefore is non-analogous art. As pointed out by the examiner in the paragraph bridging pages 6 through 7 of the Answer, Wang simply was used for showing that the Nalco 1056 Aluminized Silica is a 30% by weight solids aqueous colloidal suspension of aluminized silica particles. See column 5, lines 23 through 27 of Wang.



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